



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/408,918	09/30/1999	SUSAN C. KROMENAKER	042390.P6518	4616

7590 11/20/2002

VINCENT P TASSINARI
BLAKELY SOKOLOFF TAYLOR AND ZAFMAN LLP
12400 WILSHIRE BOULEVARD 7TH FLOOR
LOS ANGELES, CA 90025

EXAMINER

TSAI, CAROL S W

ART UNIT	PAPER NUMBER
----------	--------------

2857

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/408,918

Applicant(s)

KROMENAKER ET AL.

Examiner

Carol S Tsai

Art Unit

2857

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 November 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Claims 33-42 have been requested to be added, but no claims have been canceled.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-3, 5-11, 15 and 22-32.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: PTO-892 Notice of Reference cited

Mark S. Hoff
MARK S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2820

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed 11/05/2002 fully considered but they are not persuasive.

Applicants argue that Neufeld does not teach a real time operating system (RTOS), performance monitoring driver, or a real time operating system of an Input/Output (I/O) processor. The Examiner disagrees with Applicants. Neufeld et al. do disclose a real time operating system (RTOS), performance monitoring driver, or a real time operating system of an Input/Output (I/O) processor (see col. 1, lines 49-38; col. 3, lines 22-24; col. 4, lines 34-42; and col. 5, lines 5-29 and lines 35-49). Another problem with conventional approaches to monitoring performance of specific hardware resources of a computer system is that the events were typically stored by a driver and then subsequently retrieved at a later time by a performance monitor. Hence, the conventional approaches usually provided only historical data. As a result, such conventional approaches were unable to provide real-time monitoring of the performance of hardware resources. Thus, there is a need for improved techniques for monitoring hardware resources of a computer system (col. 1, lines 48-38). Another advantage of the invention is that the monitoring can be essentially real-time monitoring (col. 3, lines 22-24)).

Applicants argue that real time operating systems have a set of characteristics and requirements related to determinism, responsiveness, user control, reliability and fail-soft operation, that set them apart from the conventional operating system discussed in Neufeld. However, it is noted that the features upon which applicant relies (i.e., determinism, responsiveness, user control, reliability and fail-soft operation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicants argue that Neufeld et al. the network operating system by Novell, Inc, which is cited in Neufeld et al. as an exemplary operating for operating system is an example of a conventional operating system. The Examiner disagrees with Applicants. Neufeld et al. do not disclose the term of "real time operating system" but the term of "NetWare operating system by Novell, Inc.". However, a real time operating system, or an operating with real-time operating system, or an operating system with multi-tasking capabilities such as UNIXTM-based operating system, Solaris 86TM, Netware, etc., that preferably runs in the general purpose computing engine to provide the capability of performing functions that are part of the embedded application (see Mitchell et al., col. 3, lines 33-38; new cited reference, U. S. Patent No. 6,438,684 to Mitchell et al.), is well known in the art.

Applicants argue that Neufeld et al. do not teach or suggest a real time operating system operating on an I/O processor. The Examiner disagrees with Applicants. Neufeld et al. do not expressly disclose the term of I/O processor, but Neufeld et al. do disclose the concept of I/O processor, a hardware designed to produce and manipulate data before host processor receives it (see col. 10, line 60 to col. 11, line 3). In addition, in communications, an I/O processor being dedicated to the handling of transmitted information in order to relieve the burden on the host processing unit is well known in the art.

The rest of arguments stated starting at page 6 and ending at 8, the Examiner has already responded on the Final rejection mailed on 09/11/2002..